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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

DAVID GRASSI,

Plaintiff and Appellant,

v.

NANCY BURNS et al.,

Defendants;

ANTHONY CICCOLINI,

Claimant and Respondent.

A106474

(San Francisco County
Super. Ct. No. 409334)

Debtor and appellant in pro. per. David Grassi appeals from an order directing payment of funds deposited with the court to judgment lien claimant and respondent, Anthony Ciccolini. He argues that the order should be reversed because the renewal of Ciccolini's judgment was procedurally flawed and the Internal Revenue Service (IRS) is a superior lien holder. In the alternative, appellant contends that the trial court abused its discretion by not withholding his costs from the funds awarded to Ciccolini. The order is affirmed.

BACKGROUND

The following facts are undisputed. On January 27, 1989, Ciccolini obtained a judgment against appellant for \$46,551.42. Having never collected on the judgment and in an effort to keep the judgment from expiring Ciccolini (1) filed an application for

renewal of judgment with the court on December 24, 1998, and (2) filed proof of service of notice of the renewal on the same date.

Meanwhile, appellant contracted to work on the underlying defendants' home remodeling project. When things went awry, he sued the defendants for breach of contract. Before that suit reached a conclusion, Ciccolini filed a notice of lien in the action. Appellant and the defendants eventually reached a settlement in the amount of \$7,425. The presence of the lien caused the settlement money to be deposited with the court. Ciccolini thereafter moved the court for an order directing payment of the settlement funds to him. The trial court granted the motion on April 19, 2004, and this appeal followed.

DISCUSSION

Appellant contends that while the judgment against him was properly renewed, Ciccolini failed to follow the notification requirements of Code of Civil Procedure section 683.160 and, therefore, could not enforce the renewed judgment. He reasons that under section 683.160 a judgment creditor must serve notice of a renewed judgment on the judgment debtor only after an application for renewed judgment has been submitted to the court. Because Ciccolini served notice of the renewed judgment on the same day the application for renewal was filed, the reasoning goes, the notice was premature and ineffective. The plain language of the statute precludes this theory.

Code of Civil Procedure section 683.160 sets forth the notice requirements that go along with renewing a judgment: “(a) The judgment creditor shall serve a notice of renewal of the judgment on the judgment debtor. Service shall be made personally or by first-class mail and proof of service shall be filed with the court clerk. The notice shall be in a form prescribed by the Judicial Council and shall inform the judgment debtor that the judgment debtor has 30 days within which to make a motion to vacate or modify the renewal. [¶] (b) Until proof of service is filed pursuant to subdivision (a), no writ may be issued, nor may any enforcement proceedings be commenced to enforce the judgment, except to the extent that the judgment would be enforceable had it not been renewed.”

Nothing in this section requires a delay between the renewal of a judgment and service of notice of that renewal.

Even if section 683.160 could be taken to require that a judgment actually be renewed before notice of its renewal can be effective, such interpretation would fail to advance appellant's argument, because a judgment is renewed simply by filing the application for renewal. According to Code of Civil Procedure section 683.120, subdivision (b), "[e]xcept as otherwise provided in this article, *the filing of the application renews the judgment* in the amount determined under Section 683.150 and extends the period of enforceability of the judgment as renewed for a period of 10 years from the date the application is filed." (Italics added.) Therefore, though Ciccolini filed his application for renewal and served notice on the same day, any argument by appellant that the notice was served prematurely fails because the renewal became effective immediately upon the application's filing.

We note that the docket sheet in the Ciccolini action indicates that the application for renewal of the judgment, and the certificate of service of the notice thereof, were filed by the court on the same day. It appears from the order in which the documents are listed on the docket that the certificate of service was filed immediately before the application for renewal. To the extent that appellant can be taken to argue that the order of the filings made any difference, the argument lacks merit. The documents were presumably presented simultaneously for filing, and the order in which they were stamped by the clerk is immaterial.

Appellant also argues that the trial court should have directed payment of the funds deposited with the court to the IRS as a superior lien holder. However, it is not apparent that the IRS, whose liens arose after those of Ciccolini and who did not appear in the action, necessarily had a superior right to the funds as appellant asserts. (See *United States v. McDermott* (1993) 507 U.S. 447, 449 [priority of IRS versus other liens is generally determined by the rule of " "the first in time is the first in right" " "]; Code Civ. Proc., § 708.410, subd. (b) [creditor must generally file notice of lien in the action].) In any event, it is not our burden to research the point for appellant. (See *Building*

Industry Assn. of San Diego County v. State Water Resources Control Bd. (2004) 124 Cal.App.4th 866, 888 [“judgments and orders are presumed correct, and persons challenging them must affirmatively show reversible error”]). Since no legal authority is cited in support of the argument, we deem the argument to have been abandoned. (*Ochoa v. Pacific Gas & Electric Co.* (1998) 61 Cal.App.4th 1480, 1488, fn. 3.)

Finally, appellant claims that the trial court abused its discretion by not awarding him a portion of the funds deposited with the court to cover his attorney fees in the settled action. Code of Civil Procedure section 708.470, subdivision (a) provides that “[i]f the judgment debtor is entitled to money or property under the judgment in the action or special proceeding and a lien created under this article exists . . . the court *may* order that the judgment debtor’s rights to money or property under the judgment be applied to the satisfaction of the lien” (Italics added.) This section does evidently give the trial court discretion on this point and the notion of withholding a portion of the award to cover appellant’s costs so as not to discourage him from prosecuting other claims in the future is not beyond reason. However, given Ciccolini’s inability to collect on his judgment for more than a decade we cannot conclude that the trial court abused its discretion by awarding him the full sum deposited with the court.

CONCLUSION

The order is affirmed.

Kay, P.J.

We concur:

Reardon, J.

Sepulveda, J.